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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,465	03/28/2001	Michael K. Weibel	1690-P02146US1	3425

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/819,465	Applicant(s) Weibel
	Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Mar 5, 2003 .

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above, claim(s) 1-8 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 9-20 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Applicant's election with traverse of Group II claims 9-20 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the two inventions are not distinct product and process of making the product and examination of both groups would not present undue search burden . This is not found persuasive because the two inventions are patentably distinct and it is an undue burden to search both inventions. On the first ground, applicant states there is no other way to make a continuous, asymmetrical film of the type claimed. It is not clear what applicant means by asymmetrical film because the claims do not recite asymmetrical film; also, applicant does not have any evidence to show that the edible film as claimed in the product claims can only be made by the method of group I. On the second ground, applicant states the search of both groups would not present an undue search burden. The examiner respectfully disagrees. Undue burden does exist because the two inventions are not classified in the same class and the search for one group is not required for the other because the determination of patentability in product-by-process claims is based solely on the product and not on how it is made.

The requirement is still deemed proper and is therefore made FINAL.

2. The specification does not have a " Brief Description of the Drawing" which is required in application containing drawing. A Brief Description of the Drawing is required for Figure 1.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior

art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al in view of Tomasula .

Chen et al disclose edible film made of highly refined cellulose. The film contains lipid such as vegetable or fruit oils, waxes, amylopectin, polysaccharide and other fiber material, starch, natural and synthetic gums and resin, polyvinyl alcohol etc... The film is used on food products such as fruits and vegetables and other edible products. Polysaccharides, lipids, plasticizer, and proteins may be added for the purpose of making edible films. (See col. 6 lines 57-64, columns 8-10 and example 1)

Chen et al do not disclose the edible products to be frozen or parbaked dough piece such as pizza crust and cheese or using the film as barrier between heterogeneous components and coating the film with lipid, lecithin or wax.

Tomasula discloses an edible film. Additives such as plasticizer, lubricants, extenders, preservatives , antioxidant and colorant are added to the film. (See columns 10-11)

The highly refined cellulose disclosed by Chen et al is the same as the claimed structurally expanded cellulose because the specification discloses a solution containing refined cellulose is used to form the film. Chen et al disclose the film is used to coat edible products. The purpose of any film is to protect the coated product from external matter such as moisture, impurities, etc... It would have been obvious to use the edible film of Chen et al on any food product including pizza and cheese when it is desired to protect such foods from the external environment which can cause unfavorable consequence in the food product. It would have been obvious to use the film as barrier layer in a pizza product to prevent moisture migration from the topping and sauce to the crust; the moisture migration will lead to sogginess in the crust It would also have been obvious to coat the film with lecithin, waxes or lipid to function as lubricant so that the film can be easily released from the food products. Such additives are well known to be used in edible film as shown by Tomasula. Using additives for their art-recognized function would have been within the skill of one in the art.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grillo et al and Cook et al disclose edible films.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can

normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 30, 2003

LIEN TRAN
PRIMARY EXAMINER
Group 1700